

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

v.

DELIA J. BAEZ,

Defendant.

2005 MAR -2 P 3:40

U.S. DISTRICT COURT
DISTRICT OF MASS.CIVIL ACTION
NO.

05 10401 RCL

MAGISTRATE JUDGE MBB

RECEIPT #

AMOUNT \$ N/ASUMMONS ISSUED 4/5

LOCAL RULE 4.1

WAIVER FORM

MCF ISSUED

BY DPTY CLK ROMDATE 3/2/05COMPLAINTI. Introduction

1. This is a civil action brought by the United States against Delia J. Baez ("Baez"), of Boston, Massachusetts, under the False Claims Act, 31 U.S.C. §§ 3729 et seq., and under the common law for fraud, unjust enrichment, and payment by mistake of fact. The United States alleges that Baez obtained income and other assistance from the federal government by representing that she was without assets and substantial income, representations that were false, fraudulent, and misleading, since Baez had substantial assets and income, including valuable real estate properties.

2. Baez received approximately \$26,000 in federally-funded housing subsidies, approximately \$12,000 in income assistance and food stamps, and, in addition, Medicaid assistance, when she was ineligible for these payments and benefits, which are designed to assist the indigent. Baez also received substantial assistance

funded by the Commonwealth of Massachusetts and the City of Boston.

II. Jurisdiction and Venue

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1325 and 31 U.S.C. § 3730.

4. Venue lies in this District pursuant to 28 U.S.C. § 1391 (c) and 31 U.S.C. § 3732(a) as the place where Baez resides and the conduct complained of occurred.

III. The Facts

5. Baez applied for rental housing subsidies for an apartment on the premises of the Boston Housing Authority at Franklin Field, Ames St., Dorchester, Massachusetts, on (1) September 13, 1999, (2) November 30, 1999, (3) January 25, 2000, (4) September 28, 2001, (5) November 2, 2001, (6) January 13, 2002, (7) July 14, 2002, and (8) June 4, 2003. As a part of her applications, she provided false information regarding her monthly income and she made material omissions regarding her income and assets.

6. Baez moved into public housing on September 21, 2001, and vacated public housing in May 2004. During the period 2001-2004, Baez received \$51,038 in rental assistance for which she was ineligible from the Boston Housing Authority, half of which was paid for by the United States, in reliance on her representations and omissions regarding her income and assets.

7. Baez applied for income assistance and food stamps from the Massachusetts Division of Transitional Assistance and made certifications regarding her income and assets, on (1) June 31, 2002, (2) September 12, 2002, (3) October 7, 2002, (4) November 4, 2002, (5) December 9, 2002, and January 8, 2003 (two certifications for same payment period), (6) February 5, 2003, (7) February 12, 2003, and February 26, 2003 (two for same period), (8) March 21, 2003, (9) April 27, 2003, (10) May 14, 2003, (11) June 23, 2003, (12) July 12, 2003, (13) August 27, 2003, (14) October 15, 2003, (15) November 22, 2003, (16) January 15, 2004 and February 1, 2004 (two for same period), (17) February 2, 2004, and (18) February 18, 2004. In each application and certification, she provided false information regarding her income and made material omissions regarding her income and her assets.

8. As a result of Baez' applications to the Massachusetts Division of Transitional Assistance, Baez received \$9,320.08 in income assistance for which she was ineligible and \$2,962 in food stamps for which she was ineligible, for a total of \$12,282.08, paid for by the United States, in reliance on her representations and omissions.

9. Baez applied to the Massachusetts Office of Health and Human Services, Division of Medical Assistance, for Medicaid covering the period September 2002 through April 2004. For each

application and certification, she provided false information regarding her monthly income and she made material omissions regarding her income and her assets.

10. As a result of Baez' applications to the Department of Health and Human Services, she received substantial benefits from Medicaid, paid for by the United States, in reliance on her representations and omissions.

11. During the period that Baez was receiving the payments and benefits described above, she was the sole title holder of commercial real property at 3381-83 Washington Street, Jamaica Plain, Massachusetts that has an equitable value of approximately \$730,000 or more. She qualified for and obtained a mortgage from Roxbury Highland Cooperative Bank of \$179,500, secured by this property. On July 15, 2002, Baez entered into a partnership agreement to operate Mi Tierra Restaurant on the premises, and, pursuant to the agreement, she contributed \$65,000 to start-up of the business. Baez also rented storage space and parking space on this property. Baez admitted to receiving income of approximately \$4,000 a month from this property.

12. In May 2004, Baez purchased real property at 93 Cummins Highway, Roslindale, Massachusetts, a multifamily residence, for \$480,000. She qualified for and obtained a mortgage of \$384,000 from Option One Mortgage Company, secured by this property, and she made a downpayment of \$96,000.

13. During the period that Baez was receiving payments and benefits, on August 13, 2002, the United States seized \$62,552 in cash from Baez while she was attempting to pass through U.S. Customs at Logan Airport to leave the United States. Baez filed a sworn statement, pursuant to 18 U.S.C. § 983, on October 24, 2002, that she was the owner of the cash.

14. During the period that Baez was receiving payments and benefits, she maintained a checking account at Fleet Bank into which she deposited large sums of money. For example, on May 5, 2002, Baez deposited approximately \$16,000 in the account and on September 2002, she deposited \$11,962.68 in the account. Baez also withdrew large sums of money from the account. For example, by check to herself dated February 21, 2001, Baez withdrew \$25,000, and during the period May 2002 to September 2002, by checks to herself, she withdrew approximately \$51,000 from the account.

15. During the period that Baez was receiving payments and benefits, she made numerous airline trips outside of the United States.

16. Baez's representations regarding her income and material omissions regarding her income and assets were false, fraudulent, and misleading, and were false claims made knowingly for the purpose of obtaining payments and benefits funded by the United States for the purpose of assistance to the indigent.

FIRST CAUSE OF ACTION
(False Claims Act -- Housing Assistance)

17. Plaintiff incorporates by reference paragraphs 1-16 of this Complaint.

18. Baez knowingly made materially false representations in the matters referred to in paragraphs five and six in order to get false or fraudulent claims for housing assistance paid by the United States, in violation of 31 U.S. § 3729(a)(1), to wit, representations regarding her income and material omissions regarding her income and her assets.

19. Baez is liable for the amount of each and every payment made in reliance on said false representations, multiplied as provided in 31 U.S.C. § 3729(a), plus a civil penalty of \$5500 to \$11,000 for each false claim, as provided by 31 U.S.C. § 3729(a), together with interest and costs.

SECOND CAUSE OF ACTION
(False Claims Act -- Income Assistance and Food Stamps)

20. Plaintiff incorporates by reference paragraphs 1-16 of this Complaint.

21. Baez knowingly made materially false statements in the matters referred to in paragraphs seven and eight in order to get false or fraudulent claims for income assistance and food stamps paid by the United States, in violation of 31 U.S. § 3729(a)(1), to wit, representations regarding her income and material

omissions regarding her income and assets.

22. Baez is liable for the amount of each and every payment made in reliance on said false claims, multiplied as provided in 31 U.S.C. § 3729(a), plus a civil penalty of \$5500 to \$11,000 for each false claim, as provided by 31 U.S.C. § 3729(a), together with interest and costs.

THIRD CAUSE OF ACTION
(False Claims Act -- Medical Assistance)

23. Plaintiff incorporates by reference paragraphs 1-16 of this Complaint.

24. Baez knowingly made materially false statements in the matters referred to in paragraphs nine and ten in order to get false or fraudulent claims for medical assistance paid by the United States, in violation of 31 U.S. § 3729(a)(1), to wit, representations regarding her income and material omissions regarding her income and assets.

25. Baez is liable for the amount of each and every payment made in reliance on said false claims, multiplied as provided in 31 U.S.C. § 3729(a), plus a civil penalty of \$5500 to \$11,000 for each and every statement, as provided by 31 U.S.C. § 3729(a), together with interest and costs.

FOURTH CAUSE OF ACTION
(Common Law Fraud)

26. Plaintiff incorporates by reference paragraphs 1-16 of this Complaint.

27. Baez made the material representations referred to in paragraphs five through ten of this Complaint, knowing that her representations were false, or such representations were in reckless disregard of their truth or falsity, to induce the payment of the benefits and payments described, and Baez received said benefits and payments from the United States, to which she was not entitled, in reliance on her fraud, false statements, misrepresentations, and deceit.

28. Baez is liable for the amount of each and every payment and benefit that she received from the United States in reliance on her fraud, false statements, misrepresentations, and deceit, together with prejudgment interest.

FIFTH CAUSE OF ACTION
(Unjust Enrichment)

29. Plaintiff incorporates by reference paragraphs 1-16 of this Complaint.

30. Baez received the payments and benefits referred to in paragraphs five through ten of this Complaint from the United States, and she accepted and retained said payments and benefits when it was inequitable to do so because she was ineligible for

them.

31. Baez is liable in the amount of each and every payment and benefit that she received from the United States, because she was not entitled to the payments and benefits.

SIXTH CAUSE OF ACTION
(Payment by Mistake of Fact)

32. Plaintiff incorporates by reference paragraphs 1-16 of this Complaint.

33. The United States disbursed the payments and benefits referred to in paragraphs five through ten of this Complaint to Baez under mistake of fact because the United States was not legally obligated to pay said payments and benefits, and Baez accepted and retained said payments and benefits when it was inequitable to do so because she was not entitled to them.

WHEREFORE, Plaintiff demands judgment against Baez as follows:

A. On Count One, judgment against Baez for triple the damages sustained by Plaintiff, for the amount of \$113,403.24, plus civil penalties as are allowable by law in the amount of \$5,500 per violation, costs, and all other proper relief.

B. On Count Two, judgment against Baez for triple the damages sustained by Plaintiff, for the amount of \$113,403.24, plus civil penalties as are allowable by law in the amount of

\$5500 per violation, costs, and all other proper relief.

C. On Count Three, judgment against Baez for three times the amount of Medicaid payments made on Baez' behalf, plus civil penalties in the amount of \$5,500 per violation, costs, and all other proper relief.

D. On Count Four, judgment against Baez for damages of \$37,801.08, plus pre-judgment interest, costs, and all other proper relief.

E. On Count Five, judgment against Baez for restitution of \$37,801.08, plus pre-judgment interest, costs, and all other proper relief.

F. On Count Six, judgment against Baez for restitution of \$37,801.08, plus pre-judgment interest, costs, and all other proper relief.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney


ANITA JOHNSON
Assistant U.S. Attorney
Moakley United States Courthouse
1 Courthouse Way - Suite 9200
Boston, MA 02210
(617) 748-3282

DATED: March 3, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) United States v. Delia J. Baez

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

— II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AG 120 or AG 121 for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES X NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES X NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES X NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES X NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Anita Johnson

ADDRESS U.S. Attorney's Office, One Courthouse Way, Suite 9200, Boston, MA 02110

TELEPHONE NO. (617) 748-3266

(CategoryForm.wpd - 11/27/00)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

DELIA J. BAEZ

2005 MAR -2 P 3:40

U.S. DISTRICT COURT

DISTRICT COURT

DIVISION

County of Residence of First Listed Plaintiff
 (IN U.S. PLAINTIFF CASES)
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
 LAND INVOLVED.

(b) County of Residence of First Listed Plaintiff
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Anita Johnson
 United States Attorney's Office
 1 Courthouse Way, Suite 9200, Boston, MA 02210
 (617) 748-3266

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| DEF | DEF | | |
|--|----------------------------|--|---------------------------------------|
| Citizen of This State <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | REAL PROPERTY <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | CIVIL RIGHTS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | PRISONER PETITIONS <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 |
| <input type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or <input type="checkbox"/> 5 Reopened | Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | Appeal to District Judge from Magistrate Judgment |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

Transferred from another district (specify) _____

6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

False Claims Act 31 U.S.C. § 3729

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

3/2/04

SIGNATURE OF ATTORNEY OF RECORD

Anita Johnson USA

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE